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1 that already exists in another case and fix another  
2 forum. And they're manipulating everyone here.

3 Whether the forum proceedings have  
4 progressed to the point where the parties are  
5 prepared for trial. How in the world did they carry  
6 a burden there? They haven't even brought the causes  
7 of action. It has to fail.

8 The balance of hurt. You have a debtor  
9 before you who's hurting, debtors before you who are  
10 hurting, who are basically out of money, have a lot  
11 of claims, have an ownership interest in a huge  
12 project. And these people want to bring a whole new  
13 set of litigation and start over again. I think the  
14 balance of hurt is on the debtors' side. And the  
15 relief should not be granted. Thank you.

16 THE COURT: Oh, I thought we were getting  
17 two for one.

18 MR. BOLEY: I'm going to try not to  
19 repeat, Your Honor. But we do represent different  
20 debtors.

21 THE COURT: Thank you.

22 MR. BOLEY: We tried to do two for one  
23 with all the witnesses. I hope the Court appreciated  
24 that.

25 So I'm going to focus on some things that

1 Mr. Berry may not have emphasized or may have  
2 emphasized differently. And I'm going to focus on  
3 specifically four of the Curtis factors: Prejudice  
4 to the estate; interference with the estate;  
5 prejudice to creditors and expeditious and economical  
6 determination. And I'll hit a couple of follow-up  
7 issues.

8 The evidence that you've heard is that the  
9 state court litigation would prejudice the estate.  
10 It's going to interfere with the time and the focus  
11 of the debtors. Mr. Christensen testified to that.  
12 It's a fair criticism of this estate that we have not  
13 yet put together a plan. But these are difficult  
14 cases. And I need 100 percent of Mr. Christensen's  
15 time if he can get it to try to put something  
16 together. Because it is an uphill climb to turn  
17 stock that we don't know the value of and claims that  
18 we don't have a contingency fee firm yet to take into  
19 recovery from creditors. I need 100 percent of his  
20 time.

21 The biggest prejudice to the estate is the  
22 expense. You know no contingent fee law firm defends  
23 a case on a contingency. The evidence is Mr. Lavar  
24 Christensen, the debtors' brother, he might be a nice  
25 brother. He might be willing to make a halfhearted

1 effort and appear as some hearings. He's not the  
2 answer for this estate. I don't think it would be  
3 fair to Mr. Christensen, Mr. Lavar Christensen, to  
4 ask him to go put in a halfhearted part-time effort  
5 in state court, and then when he commits malpractice,  
6 and if this case got converted, for him to get sued  
7 for malpractice by this estate because when he worked  
8 for free, knowing he's a full-time legislature,  
9 part-time developer, and a part-time sole  
10 practitioner lawyer, it's not fair to put him in that  
11 situation or the estate in that situation. He's not  
12 the answer.

13 The evidence from Mr. Christensen's  
14 testimony and Mr. Manning's testimony were that the  
15 legal expense to defend this case would be a half  
16 million dollar plus. The estate does not have it.

17 The time it will take to resolve the state  
18 court litigation is another prejudice to the estate.  
19 If the estate's resources were unlimited, I would be  
20 happy to have this punted to another lawyer in state  
21 court, as I'm sure you would. You'd rather have  
22 another court resolve issues. But as a bankruptcy  
23 attorney in a Chapter 11 case and as a bankruptcy  
24 judge, we deal with claims in the bankruptcy court  
25 all the time. And we do it a lot faster and a lot

1 cheaper than state court litigation is resolved.

2 So the time differential, a three year  
3 track to resolve in state court versus -- candidly,  
4 we will wait to see if it even makes sense to object  
5 to a claim before we do. We're not going to object  
6 to claims unless there's some money to go around,  
7 unless there is a pot. But assuming that happens,  
8 it's not going to take three years and it won't be  
9 nearly the expense to resolve it here. And I think  
10 that's your experience as a -- before your time on  
11 the bench and since your time on the bench, Your  
12 Honor.

13 Perhaps the greatest potential prejudice  
14 to the estate is the risk of default. Either a  
15 complete default because there's no counsel there or  
16 a default in the sense that the estate is simply  
17 overwhelmed and overpowered in state court. Granting  
18 relief from stay essentially is writing a blank check  
19 -- or it would be the same as saying, why don't you  
20 fill out this proof of claim, put in whatever number  
21 you want, the debtor can't object to it. Not  
22 realistically. Not practically. Because the debtor  
23 cannot challenge those claims in state court. They  
24 can here.

25 When I was thinking about what position

1 making this case might go forward in state court, it  
2 was like I was reminded of a time I was in  
3 Canyonlands with a group to go camping. One of the  
4 cars ahead of me in this line, we were heading into a  
5 camp spot, the axel broke. There was a guy in our  
6 group that was able to put that axel back together,  
7 on a temporary basis, with a strap. He put the car  
8 back together and they got it into town and they got  
9 it fixed. He was the MacGyver of that camping trip.  
10 Don't put this debtor in a position where the only  
11 way we can succeed is if someone pulls a MacGyver.  
12 And that's it. We can't successfully defend these  
13 claims in state court. The resources don't exist.

14 The comments I've made and the evidence  
15 I've summarized regarding prejudice to the estate,  
16 they're similar with interferences of the estate so  
17 I'm not going to repeat.

18 Mr. Berry briefly touched on the prejudice  
19 to creditors, and I'll just reiterate. This claims  
20 dilutes other creditors' claims. The legal expense,  
21 assuming that we somehow came in with assets that  
22 could pay a creditor, all that money then would go  
23 out the door to pay legal expense. That dilutes and  
24 prejudices creditors. And creditors lose their right  
25 to object unless they're willing to go seek to

1 intervene in state court. Here, even if the debtor  
2 does not, a creditor can object to another creditor's  
3 claim. It can't go do that in state court, at least  
4 not easily.

5 I've already talked about expeditious and  
6 economical determination. The state court proceeding  
7 is going to cost a half million plus dollars. It's  
8 going to take three plus years. Let me say this,  
9 Forge would like that case done quick. The TM  
10 parties do not want an expeditious resolution of that  
11 state court action. This whole thing is a delay  
12 tactic. They are trying to delay foreclosure by  
13 making -- but putting up the ugliest, nastiest, most  
14 confusing claims they can before Judge Taylor to  
15 complicate a very simple judicial foreclosure action.  
16 It won't be fast. It won't be quickly resolved  
17 there. And it will be very expensive.

18 The claims that will be asserted, if the  
19 Court grants the motion, are new. Were you  
20 interested to look and remind yourself of the  
21 extension doctrines and what grounds, if you granted  
22 relief and that triggered a right for the debtor to  
23 remove the case to your court. Which I know you  
24 wouldn't want to happen. You might be interested to  
25 learn that if it's not a preexisting case that

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1     existed before the lawsuit, before the bankruptcy,  
2     mandatory extension does not apply. So you grant  
3     this motion for relief -- I don't know if we would,  
4     but if we remove the case back here, mandatory  
5     extension doesn't apply because it was not a  
6     preexisting lawsuit. Those claims were not  
7     preexisting claims against the debtors.

8             On the other hand, if you say I'm granting  
9     relief. I'm clarifying to the state courts that the  
10    automatic stay doesn't apply to non-debtors, just in  
11    case you -- that's not clear enough, I'm going to  
12    grant relief from stay so anybody can go against  
13    non-debtors and do whatever discovery they want.  
14    That case never comes here. We deal with it here in  
15    the claims process if there's money to distribute to  
16    creditors. It may never happen. That case  
17    definitely never comes back here, and these folks can  
18    have their fight and the debtor doesn't have to get  
19    drawn into it. The debtor doesn't want to get drawn  
20    into this RICO conspiracy fight.

21            The debtors are not indispensability  
22    parties. The brief we filed yesterday makes that  
23    clear. That's Hornbook law. That was not an issue  
24    briefed to the state court judges. I'm confident  
25    that if that issue comes up and they need to consider

1 it, some counsel, not me, because I won't be there,  
2 will educate them that there's no basis for claiming  
3 these parties are indispensable parties. But that is  
4 an issue for the state courts to decide. That is not  
5 a basis to grant the motion because the law is  
6 clearly to the contrary.

7 Finally, I'd remind the Court, the Curtis  
8 case was a case not unlike ours. In fact, maybe less  
9 compelling. At least the recitation of facts in the  
10 case, there's no showing of prejudice greater than  
11 we've shown today. That court denied the motion for  
12 relief. Some of the Court's comments are summarized  
13 in paragraph 107 of our objection and response, page  
14 21. Curtis court says, "This case would be more  
15 conveniently administered if the stay remained in  
16 effect. Relief from the stay would frustrate, rather  
17 than advance the economical administration of this  
18 case. Potential disruption and expense to the  
19 debtors' estate in defending the state court lawsuits  
20 would cause great prejudice to the administration of  
21 this case. The collateral benefits that movants hope  
22 to achieve from the state court proceeding are  
23 nonexistent." That's this case.

24 For the same reason the Curtis court  
25 denied the motion before it, you should deny this



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1 motion. The debtors ask you to deny the motion and  
2 permit statutory automatic stay to remain in effect.

3 MR. SHIELDS: Should I do rebuttal or does  
4 Forge want to (inaudible).

5 MR. HARRINGTON: No. Our comments would  
6 be (inaudible).

7 THE COURT: All right. Let me take care  
8 of Forge. I mean, I made them come back and sit  
9 through all this.

10 Mr. Harrington, Ms. Olsen, you can craft  
11 an order that says affirmatively Forge is granted  
12 relief from stay to pursue its claims in both pending  
13 actions, including any motion to consolidate the  
14 actions.

15 MS. OLSEN: I have an order, Your Honor.  
16 May I present it?

17 THE COURT: No. Thanks for asking.

18 The motion filed by the Traverse Mountain  
19 parties for relief from stay for cause, and under  
20 362(g), the debtors, the Christensens in the one case  
21 and VS Fox Ridge in the other, have the burden to  
22 show that they're entitled to maintenance of the  
23 stay. The Curtis factors are widely cited. The  
24 parties have briefed those. And I'd like to review  
25 my notes from today's hearing.

1           Mr. Shields first called Mr. Christensen  
2     to the stand. And by the way, Mr. Christensen, I can  
3     tell from your testimony and the emotion that you've  
4     shown that this is a very important matter to you,  
5     that you've invested a great deal of blood and  
6     treasure in this development. And so I hope you  
7     understand that I am very aware of how much this  
8     means to you.

9           Exhibit 1 consists of a little bit of a  
10    mishmash, Mr. Shields, of schedules from both cases.  
11    In the Christensen personal case, the Christensens  
12    have interests in VS Fox Ridge and Mountain Home  
13    Development Corporation. They have claims against  
14    the Traverse Mountain entities. They have lawsuit  
15    claims that are listed in paragraph 21 of schedule B.  
16    And many of these are at play in the lawsuits. And  
17    while I wasn't sure why people at the beginning were  
18    referring to the lawsuits by the judge's names,  
19    that's become the easiest way for me to keep them  
20    separate too.

21           So the Toomey case, I think I understand.  
22    The Christensens have a few remaining claims against  
23    the individual, Mr. Howcroft. But the other claims  
24    that they've asserted, the asset claims in these  
25    cases, have been dismissed pursuant to summary

1 judgment. That's not a final judgment in that case.  
2 But it seems to me it could soon be a final judgment  
3 if the remaining claims by the Traverse Mountain  
4 entities are transferred to and consolidated into the  
5 Laycock and Taylor matters.

6 But the problem, Mr. Christensen, that you  
7 have is that you don't have a factory to reorganize  
8 here. You don't have any employees, you don't have  
9 any inventory, you don't have any cash, you don't  
10 have any accounts receivable other than accounts  
11 receivable that are in the nature of disputed claims.  
12 People say, no, we don't owe you that money that you  
13 think we owe you. And so the only way to turn these  
14 assets, the lawsuit claims, the disputed accounts  
15 receivable claims, is through litigation. That's the  
16 situation that you're in.

17 These cases were filed on June 20, 2012.  
18 We are, as of today, we are one week shy of the  
19 120-day benchmark in this case. After which the  
20 debtors will not have the exclusive right to file a  
21 plan and disclosure statement.

22 There has been no discovery done by the  
23 Christensens or VS against Traverse Mountain to get  
24 the information Mr. Christensen says he's been  
25 denied. I don't know why that hasn't happened.

1 There's been no plan or disclosure statement filed in  
2 either case. And I know these are complicated cases.  
3 But still, it hasn't been done. And the claims that  
4 are asserted in the actions and including the  
5 allegations that the Traverse Mountain parties have  
6 made against the Christensens and Forge, which I  
7 don't take as true, obviously. But they are claims  
8 or concerns that deserve attention but a judge. It  
9 can't be me.

10 And Mr. Boley, it's not because I don't  
11 want to. It's because I can't get to the bottom of  
12 these claims. I don't have jurisdiction over all of  
13 the parties to the proceedings. Judge Taylor does.  
14 Judge Laycock does. I can imagine an arm wrestling  
15 contest between the two of them to see who might end  
16 up with this lawsuit. But they are -- those are all  
17 state law causes of action over which I have, at  
18 best, related to jurisdiction. And even with respect  
19 to some of the claims not involving Forge and  
20 Traverse Mountain against each other, there are  
21 claims over which I would only be able to offer  
22 report and recommendation. And the problem with that  
23 procedural approach is it cries out for somebody to  
24 say, no, let's have a de novo review by the district  
25 court. Let's just go through the whole thing all

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1 over again.

2 And while I haven't looked at the issue,  
3 Mr. Boley, your position on mandatory abstention with  
4 respect to claims asserted post-petition, obviously  
5 there's still the issue of discretionary abstention  
6 with much the same analysis in many respects.

7 It's a very difficult decision for me  
8 because I know how difficult it would be for the  
9 Christensens and for VS Fox Ridge to both defend  
10 themselves and to prosecute their affirmative asset  
11 claims against the other parties in the situation  
12 that they're in, with no cash. But I don't see that  
13 there's any way for the bankruptcy court to resolve  
14 all the disputes in one forum. And the only  
15 alternative would be to split up all of the  
16 litigation at the expense of all of the parties  
17 involved.

18 And Mr. Boley and Mr. Berry, if you don't  
19 want to go to Fourth District court, nobody's going  
20 to make you. That's your adult agreement with your  
21 clients. But it doesn't make sense to me that you  
22 say you can -- you'll do it here, you'll defend and  
23 prosecute claims here but you won't do it there.

24 Mr. Christensen testified that he and the  
25 entity need to do discovery of the Traverse Mountain

1 entities to determine their financial position. It  
2 sounds like he's been denied information since I  
3 think it was 2009. That's the information that I  
4 have.

5 As to the Toomey matter, Mr. Manning  
6 testified against summary judgment had been granted  
7 against the Christensens and VS Fox Ridge on all of  
8 their claims against his clients and that there's two  
9 claims remaining against Mr. Howcroft represented by  
10 other counsel. There are still pending requests for  
11 sanctions for discovery of uses and attorney's fees.  
12 But Traverse Mountain property -- Traverse Mountain  
13 entities are not seeking relief from stay as to that.

14 The Traverse Mountain properties entities  
15 want Judge Toomey to rule on the briefed motion to  
16 modify the protective order to use the documents in  
17 the other lawsuits, the Taylor and Laycock matters.  
18 It's been briefed by both sides. The hearing's set  
19 for July 5th. It didn't happen because of the  
20 bankruptcy case. So I'm specifically granting relief  
21 from stay effective upon entry of the order to allow  
22 the Traverse Mountain properties entities to file --  
23 set a hearing on that matter.

24 The automatic stay will remain in place as  
25 to the balance of the claims in the Toomey matter as

1 they relate to Mr. and Mrs. Christensen and VS Fox  
2 Ridge. There is no stay as to any other party in  
3 that action, any other defendant. Or I guess they  
4 were plaintiffs, weren't they?

5 Mr. Boley, help me. Is there a pleading  
6 in the Toomey action so I can see exactly who's  
7 involved in that?

8 MR. BOLEY: Exhibit R, Your Honor. I  
9 don't know if that's a complete list. Perhaps also  
10 Exhibit Q, which was the debtors' second amended  
11 complaint.

12 THE COURT: All right. So the plaintiffs  
13 in the Toomey matter are McKay Christensen, Mr. and  
14 Mrs. Christensen, VS Fox Ridge. And then I'm not  
15 sure, Chris Christensen, Sherry Christensen, and SJ  
16 Fox Ridge, are they actively involved in that case  
17 any longer? Any idea?

18 MR. BOLEY: I think they're all still in  
19 the case, but I don't know for sure.

20 THE COURT: Okay. Well they're --

21 UNIDENTIFIED SPEAKER: My clients say they  
22 are involved, yes.

23 THE COURT: Okay. They're non-debtors and  
24 the stay doesn't affect any further action by the  
25 Traverse Mountain parties against them.

1           The Exhibit 6 that was received -- and I  
2 understood that to be counsel's best effort to put  
3 together and articulate the claims that they would  
4 like to raise. And the timing of the filing with the  
5 other documents, I don't see as being undertaken with  
6 any effort to try to surprise the debtors' counsel  
7 but simply that they were just trying to get it in as  
8 quickly as they could.

9           The proposed document, Exhibit 6, does  
10 raise claims that are already pending in the Toomey  
11 action that they want to transfer to Judge Taylor's  
12 court. That'll be up to Judge Taylor. I'm not  
13 saying they can. I'm just saying they can ask.  
14 There are a couple of new claims there that are  
15 raised in response to what the Traverse Mountain  
16 parties say that they learned during discovery in the  
17 Toomey action concerning the relationship between the  
18 Christensens and Forge. I think it makes sense for  
19 those matters to be tried in one place where all the  
20 parties are participating. It avoids the risk of  
21 inconsistent judgments. I think it reduces the  
22 overall expense for the parties.

23           And although you've argued it, Mr. Boley,  
24 I don't see that it would be -- I didn't see that  
25 there's any real evidence that would cost any less to



1 litigate and liquidate the claims; both Christensen's  
2 and VS Fox Ridge's asset claims and the claims  
3 against them in state court as opposed to here. It  
4 would reduce the overall cost to the parties. And it  
5 would reduce the prospect of inconsistent judgments  
6 here and there. So that said, I think the lawsuits  
7 before Judge Laycock and Judge Taylor ought to go  
8 ahead.

9 What I'm concerned about is even though  
10 there hasn't been much action by the debtors in their  
11 cases -- and Mr. Boley, I don't think we have an  
12 August monthly operating report and September's due  
13 on Monday. I don't know what's going on in the  
14 cases. I don't think much. What I'd like to hear  
15 from you, either or both of you, is how much time you  
16 think the debtors needs before that litigation goes  
17 forward with or without the Christensens and VS Fox  
18 Ridge, whether they decide to defend and prosecute  
19 their claims or not. And I'm thinking in terms of  
20 weeks rather than years, so.

21 MR. BOLEY: Would you give me one moment  
22 to speak with Mr. Steve Christensen?

23 THE COURT: Of course.

24 MR. BOLEY: And get his input?

25 THE COURT: Yes.

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1 MR. BOLEY: Can we step outside, Your  
2 Honor?

3 THE COURT: Yes. We'll just go off the  
4 record. And you let us know when you're done.

5 (Break taken from 3:26 to 3:32 p.m.)

6 THE COURT: All right. We're back on the  
7 record.

8 Mr. Boley and Mr. Berry, what I'm looking  
9 for is some guidance. I want to allow the debtor a  
10 chance to reorganize. But my view is I'm required to  
11 grant relief from stay under these circumstances. So  
12 what do you think?

13 MR. BOLEY: As we were debating that in  
14 the hall, Your Honor, I reminded my client that we  
15 should not ask for too much. He wants to ask for  
16 four weeks. And there's one other request we would  
17 ask.

18 THE COURT: Oh, that's -- yeah, I was  
19 going to give you six.

20 MR. BOLEY: Okay. We want six weeks.

21 THE COURT: Okay. You got it.

22 MR. BOLEY: The other request we would ask  
23 is the debtor actually believes it's more prejudiced  
24 if the stay remains in effect in the Toomey case and  
25 only the Taylor case goes ahead. Even though my view

1 of the automatic stay is it doesn't apply to the  
2 debtors' claims against third parties. I don't want  
3 somebody crying foul if and when we find a lawyer to  
4 take that case up. If we're going to do it, let's  
5 just lift it in both. I mean, you've already made  
6 your ruling. But if that's your ruling, the debtor  
7 would prefer to have the stay lifted in both cases.

8 THE COURT: I'm sorry. When you say both  
9 cases?

10 MR. BOLEY: The Toomey case and the Taylor  
11 case.

12 THE COURT: And the Laycock case?

13 MR. BOLEY: And the Laycock case. Instead  
14 of just Taylor and Laycock, might as well lift the  
15 stay in Toomey. Then there's no question when the  
16 debtor starts ramping up -- because that's where all  
17 the debtors' claims are, as good or bad as they might  
18 be.

19 THE COURT: Well, doesn't it make sense --  
20 I mean, if -- I hate to see him run into Judge Toomey  
21 and spend a lot of time and money saying let me --  
22 you know, let's go ahead with this, when they're  
23 trying to transfer those claims over to the other  
24 case.

25 MR. BOLEY: I don't think the debtors want

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1 those claims transferred over to the other case. And  
2 I think --

3 THE COURT: Well, I understand that.

4 MR. BOLEY: And that create -- frankly,  
5 that increases the likelihood Judge Taylor is going  
6 to look at it as, these guys can't go ahead in Toomey  
7 so I have to let them go ahead here. And so it  
8 increases the likelihood that Judge Taylor grants  
9 their motion. It's a very savvy litigation ploy. It  
10 puts them in a better posture to prevail there. The  
11 debtor would just prefer in six weeks the stay is  
12 lifted in all the cases and --

13 THE COURT: We have no committee in either  
14 case, right?

15 MR. BOLEY: No, committees.

16 THE COURT: All right. Mr. Kuhn, does the  
17 U.S. Trustee have any concern about me simply  
18 clarifying that there is no stay in effect -- or any  
19 stay with respect to the Toomey action is modified  
20 entirely, to let that go ahead?

21 MR. KUHN: No, Your Honor.

22 THE COURT: Okay. Now, that would allow  
23 the Traverse Mountain parties to move ahead with that  
24 action if they choose.

25 MR. BOLEY: I understand.

1 THE COURT: Including attorneys' fees,  
2 sanctions and all that.

3 MR. BOLEY: Yeah. One other clarification  
4 we're going to ask is as to the debtors, they're  
5 going to state court to liquidate claims only, not  
6 for entry of judgment. They come back here with  
7 their liquidated claim. Because entry of a judgment  
8 is prejudicial to the estate. I don't think you  
9 intended to permit that.

10 THE COURT: Yeah. I didn't intend that.

11 MR. BOLEY: And so I understand they can  
12 seek their attorneys' fees in the Toomey case. We  
13 understand the negatives. The debtor understands  
14 them and --

15 THE COURT: All right. Let me ask:  
16 Mr. Shields, any thoughts about that?

17 MR. SHIELDS: I'm just a little bit  
18 confused. If they're saying they want to amend our  
19 motion now or they want -- grant -- they're  
20 withdrawing their objection to our initial motion --

21 THE COURT: No. They stay they want to go  
22 ahead in the Toomey action with whatever remaining  
23 claims that they have. But --

24 MR. SHIELDS: They're not stayed anyway,  
25 right? But I don't think they're stayed. They can

1 go ahead with their action it's just that --

2 THE COURT: Well, you'd have to go back  
3 and read the TW Telecom case.

4 MR. SHIELDS: Yeah. I don't want to do  
5 that.

6 THE COURT: That was in an appeal context.  
7 But I don't really know.

8 MR. SHIELDS: Yeah.

9 THE COURT: What we should do is clarify  
10 that if they say on the record they want to go ahead  
11 with that, I'm going modify the stay or terminate the  
12 stay as to your clients to allow them to proceed on  
13 their claims and defend themselves.

14 MR. SHIELDS: Okay. In the Toomey  
15 litigation as well as the Taylor litigation?

16 THE COURT: Yes.

17 MR. SHIELDS: So instead of limiting the  
18 relief to just the protective order in the Toomey,  
19 the Court's going to grant total relief in the Toomey  
20 case?

21 THE COURT: That's what the debtors want.

22 MR. SHIELDS: That's what we originally  
23 asked for and they objected. And so we cut back  
24 because we were trying to accommodate them. But it  
25 sounds to me like they've -- can I just talk to my

1 client one second and --

2 MR. HARRINGTON: Your Honor, just to  
3 clarify one matter.

4 THE COURT: And I'm sorry, Mr. Harrington.  
5 I need you at the microphone.

6 MR. HARRINGTON: Yeah.

7 THE COURT: You can sit down, if you want.

8 MR. HARRINGTON: If -- in the Laycock and  
9 Taylor matters, we have filed a motion to  
10 consolidate. We heard today for the first time that  
11 there's no objection to consolidation. So when we've  
12 talked about Laycock and Taylor, it will become the  
13 Taylor case, both cases.

14 THE COURT: That's the lower number case?

15 MR. HARRINGTON: Yes. It is the first  
16 filed case. So when we talk about Laycock and Taylor  
17 I think Mr. Shields is right, it's simply going to be  
18 the Taylor case.

19 MR. SHIELDS: Your Honor, that's  
20 acceptable to my client.

21 THE COURT: All right. Let me see if I  
22 can restate then.

23 Again, on the Taylor case -- and I'll just  
24 refer to it as that at this point. Even though both  
25 Judge Laycock and Judge Taylor used the term

1 "indispensable," I've read Mr. Boley's argument on  
2 that issue. He's probably right. I'm not going to  
3 tell those judges that Mr. Boley's right and they're  
4 wrong. What I do think is important is in both cases  
5 both judges were clear that the claims among both the  
6 debtors and the non-debtors are intertwined. That's  
7 echoed in Mr. Lavar Taylor's [sic] e-mail where he  
8 was talking about -- and I'm trying to remember who  
9 that was -- that was Exhibit 8. Mr. Lavar  
10 Christensen's e-mail of June 26th, talking about the  
11 issues and defenses are so integrated. I think for  
12 all of these reasons that the stay should be modified  
13 to allow the Taylor case, consolidated with the  
14 Laycock case, to go forward as to all parties, as to  
15 all claims.

16 And again, given the debtors' withdrawal  
17 of their objection, I'll expand the relief granted to  
18 the TM parties to allow all of the parties in that  
19 action, the Toomey action, to liquidate their various  
20 claims and defenses.

21 As to -- and I want to track this. So as  
22 to the Toomey action and the protective order only,  
23 because I want to -- I think it makes sense to get  
24 that out ahead of the rest of this. I'll grant  
25 relief from stay effective upon entry of the order to



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1 allow that discrete part of that case to go ahead.  
2 As to the rest of the Toomey action and the  
3 consolidated Taylor action, if that's what Judge  
4 Taylor decides to do, relief from stay will be  
5 effective Wednesday, November 28, 2012.

6 MS. OLSEN: Could you say that date again,  
7 Your Honor?

8 THE COURT: Wednesday, November 28, 2012.

9 MS. OLSEN: Did you want one order that  
10 deals with all these issues?

11 THE COURT: We've got some really good  
12 attorneys here. I think you can work that out, and I  
13 really appreciate it.

14 MR. SHIELDS: We'll work on that, Your  
15 Honor.

16 THE COURT: All right.

17 UNIDENTIFIED SPEAKER: Your Honor, it's  
18 just been brought to my attention that November 28th  
19 is when the trial begins in the Judge Kennedy case.  
20 Just a coincidence, but...

21 THE COURT: And this simply means that no  
22 pleadings can be filed prior to that date.

23 UNIDENTIFIED SPEAKER: Yes, Your Honor.

24 THE COURT: No request for scheduling  
25 conferences, no notices to submit, nothing.

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1 All right. Mr. Shields, who are going to  
2 be your contacts on working out an agreed order?

3 MR. SHIELDS: Yes. We'll work with  
4 Sherilyn and with the debtors to try and do one order  
5 that grants the stay of relief in the Toomey case  
6 effective upon entry as stay relief on the other  
7 cases on November 28th.

8 MR. BOLEY: Immediately only as to the  
9 motion for the protective order, if I understand  
10 correctly.

11 THE COURT: Yes.

12 MR. SHIELDS: Not attorneys' fees.

13 THE COURT: Right.

14 MR. SHIELDS: But the balance of Toomey  
15 will be effective on November 28th, correct?

16 THE COURT: Yes. All right?

17 MR. BOLEY: Okay.

18 THE COURT: All right. Thank you very  
19 much for your patience, your help.

20 MR. HARRINGTON: Your Honor, there's one  
21 other matter if we could ask, and this does relate.  
22 We have a discovery dispute in which Mr. Shields has  
23 filed a motion to quash. We have also filed a motion  
24 to compel production. It is -- it involved the very  
25 issue of what monies Mountain Home may owe the

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1 debtor. And we, being the largest creditor, are  
2 interested. We have scheduled it for November 5th.  
3 I'm asking if there's any possibility of getting that  
4 on your calendar sooner.

5 MS. OLSEN: Your Honor, while you're  
6 looking at that, can I ask one more question? On the  
7 stay order that we're drafting for the effectiveness  
8 of November 28th, since we're already being delayed  
9 six weeks, can we have a waiver or 4001(a)(3) for the  
10 effectiveness of the remainder of the stay?

11 THE COURT: That's --

12 MS. OLSEN: So on the --

13 THE COURT: Yes. That's what I intended.

14 MS. OLSEN: Okay.

15 THE COURT: So thank you.

16 MS. OLSEN: Thank you.

17 THE COURT: I mean, you don't have to wait  
18 until November 28th and then wait another two weeks.

19 MS. OLSEN: Okay.

20 MR. SHIELDS: I'm confused, Your Honor.  
21 If the Court could possibly clarify. Does the  
22 six-week period apply to Forge also?

23 THE COURT: Yes.

24 MR. SHIELDS: Or only as to the TM  
25 companies?

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1 THE COURT: No. It's everybody.

2 MR. SHIELDS: Yes.

3 THE COURT: I can move it up a week, the  
4 29th at 2:00.

5 MR. HARRINGTON: That would be terrific,  
6 Your Honor. And we'll notice that out.

7 THE COURT: Is that okay, Mr. Shields?

8 MR. SHIELDS: Let me check, Your Honor.  
9 That's a Monday?

10 THE COURT: Yes.

11 MR. SHIELDS: Does that give us time to  
12 brief?

13 MS. OLSEN: I believe the brief's due on  
14 the 26th.

15 MR. SHIELDS: (Inaudible.)

16 MR. HARRINGTON: Yep.

17 MR. SHIELDS: Okay. Thank you.

18 MR. HARRINGTON: Thank you, Your Honor.

19 MR. SHIELDS: Your Honor, would we still  
20 have the status conference on the 6th of November,  
21 the continued status conference, given the changes of  
22 the orders?

23 THE COURT: Well, it sounds like you're  
24 making progress on the tax returns, which is one of  
25 the things we want to talk about, plus the plan. So

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1 would one of you, Mr. Berry or Mr. Boley, just  
2 contact me and see if we can reschedule that, push it  
3 back a little bit?

4 MR. BOLEY: Certainly, Your Honor.

5 THE COURT: Tomorrow. Just give me a call  
6 tomorrow some time.

7 MR. BOLEY: We'll do it.

8 THE COURT: All right. Thank you very  
9 much.

10 MR. SHIELDS: Thank you, Your Honor.

11 THE BAILIFF: All arise.

12 (Concluded at 3:45 p.m.)

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REPORTER'S CERTIFICATE

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )


I, Tamra J. Berry, Registered Professional  
Reporter and Notary Public in and for the State of  
Utah, do hereby certify:

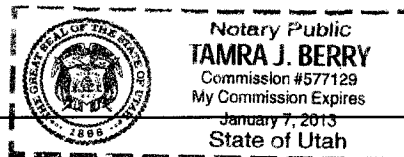
That on October 18, 2012, I transcribed an  
electronic recording;

That the testimony of all speakers was  
reported by me in stenotype and thereafter  
transcribed, and that a full, true, and correct  
transcription of said testimony is set forth in the  
preceding pages, according to my ability to hear and  
understand the tape provided;

I further certify that I am not kin or  
otherwise associated with any of the parties to said  
cause of action and that I am not interested in the  
outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this  
23rd day of October, 2012.

  
Tamra J. Berry CSR, RPR



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October 11, 2012

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